

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2856 of 2016

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure 1908 by the unsuccessful petitioner/defendant/JDr is directed against the warrant of attachment dated 24.04.2012 issued by the Court of execution, viz., the Court of the learned Principal Senior Civil Judge, Warangal in E.P.no.393 of 2011 in OS.no.419 of 2010 filed by the DHr for recovery of the amount due under the decree in a sum of Rs.1,76,234/- with subsequent interest and costs by attachment of the salary of the JDr, who is working as a Senior Assistant in the office of the Special Deputy Collector, Indira Sagar Project, Kalyana Mandapam Road, Bhadrachalam.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. To begin with, the case of the defendant/JDr in this revision petition, in brief, is as follows:

The plaintiff filed the suit for recovery of money. The suit is filed with false, frivolous and vexatious allegations. This defendant filed a written statement in the above suit. As this defendant did not appear and as there was no representation on her behalf, the trial Court was pleased to set her *ex parte* and had passed an *ex parte* decree in the suit on 14.09.2011. The non-representation on behalf of the defendant on the aforesaid date of hearing before the trial Court is not intentional, but, due to the reason that the counsel was out of station. The defendant being a Government servant could not avail leave on that day. Therefore, her absence before the trial Court on the said date is not intentional. Hence, this defendant had filed an application to set aside the *ex parte* decree. But, unfortunately, a delay of 262 days (i.e., from 14.09.2011 to 03.07.2012) had occasioned in filing the application for

setting aside the *ex parte* decree. The said delay is not intentional, but only due to the aforesaid reasons; therefore, the request of the defendant deserves consideration. She has got ample grounds for success in the above suit. Taking advantage of the *ex parte* decree, the plaintiff/DHr is trying to harass this defendant and is resorting to wrongful means. If the *ex parte* decree is not set aside, this defendant suffers great and irreparable loss. However, on 11.06.2013, the trial Court had dismissed the application filed for condonation of delay in seeking to set aside the *ex parte* decree. Therefore, the defendant had filed C.R.P.No.2857 of 2016 before this Court. During the pendency of the revision, the DHr had filed the above EP and sought attachment of the salary of the JDr only to make a wrongful gain for himself and cause wrongful loss to the JDr and harass her. The executing Court ought to have seen that the plaintiff is a resident of Bhadrachalam Town, which is a schedule agency area, and therefore, the suit ought to have been filed in the Court of the Special Assistant Agent-cum-Mobile Court and not before a Civil Court and that the suit promissory note is fabricated and that the cause of action is invented and that the cause of action is vague without mentioning the house number. Further, the defendant is working as a Senior Assistant in the office of the Special Deputy Collector, Indira Sagar Project, Kalyanamandapam Road, Bhadrachalam, which is a prestigious project of the State Government. The said place is situated at a distance of 400 KMs from Warangal District. The plaintiff has chosen that distant place for instituting the suit to harass the defendant and obtain a decree without contest. The executing Court ought to have seen that the trial Court's order dismissing the petition for condonation of delay by not giving an opportunity to contest the suit resulted in the violation of the principles of natural justice. The executing court ought to have seen that the mistake is that of the counsel of defendant and that there is no negligence on the part of the defendant and that fraud was played by the plaintiff and that therefore, the execution petition seeking attachment of salary pursuant to the *ex parte* decree is unsustainable.

4. The contentions of the plaintiff, in brief, are as follows:

The material allegations made in the revision petition are false. The

allegations that the counsel was out of station and that the defendant being a Government servant could not avail leave on the date of hearing of the suit are false. The defendant is not diligent in prosecuting the defence. The long delay of 262 days is not at all explained. The trial Court by a detailed and reasoned order dismissed the application for condonation of delay and had rejected the application for setting aside the *ex parte* decree. The *ex parte* decree has become final. The executing Court cannot go behind the decree and examine the merits of the decree. Even if the JDr has got any tenable defence, she should approach the executing Court and file her counter by stating her objections, if any, but, she cannot challenge a warrant of attachment of salary. No revision lies against a warrant that was issued by the executing Court for attachment of salary of the JDr. A warrant will be issued pursuant to the order passed in the execution petition. That order is only liable for challenge, if the JDr has got any grounds to challenge the same. Since the JDr did not pay any amount pursuant to the decree and is trying to delay and defeat the just claim, the DHr is constrained to file the EP and seek attachment of the salary of the JDr by following the due procedure established by law. The revision is not maintainable and is liable to be dismissed.

5. The learned counsel for both the parties advanced arguments in line with the contentions of the parties extracted supra.

6. I have bestowed my attention to the facts and the submissions. Pursuant to an *ex parte* decree in a suit for recovery of money, the DHr had filed the EP for recovery of a sum of Rs.1,76,234/- and costs due under the decree with subsequent interest. In the execution petition, the DHr had sought the attachment of the salary of the JDr, who is a Government servant. The Court below having passed an appropriate order had directed for issuance of a warrant for attachment of the salary of the JDr. The copy of the warrant is filed along with the revision and the said warrant is assailed in this revision. As rightly contended by the learned counsel for the DHr, no revision lies against a warrant that was issued by the executing Court for attachment of salary of the JDr. A warrant will be issued pursuant to the order

passed in the execution petition. That order is only liable for challenge, if the JDr has got any grounds to challenge the same. Therefore, the revision is not maintainable and is liable for dismissal. Further, one of the contentions of the JDr is that applications filed for setting aside the *ex parte* decree and condonation of delay in seeking to set aside the *ex parte* decree are filed and that on the dismissal of the application for condonation of delay, a revision in C.R.P.No.2857 of 2016 is filed before this Court. It is appropriate to mention that the said revision, which is coming along with the instant revision, is dismissed today by this Court by a separate order made in the said revision. Thus, the *ex parte* decree has now become final as on today. The law is well settled that the Court of execution cannot go behind the decree. As rightly contended, even if the JDr has got any tenable defence, she should approach the executing Court and file her counter by stating her objections. In that view of the matter also and in the facts and circumstances of the case, the revision is liable to be dismissed.

7. The Civil Revision Petition is accordingly dismissed without costs giving liberty to the JDr to approach the Court of execution and file her counter with objections, if any, by seeking an opportunity to contest the execution petition. No costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

04th July, 2016
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